

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Jevyn Berney,  
Plaintiff

v.

Southern Desert Correctional Center, et al.,  
Defendants

2:15-cv-00888-JAD-VCF

**Order Extending Stay and Granting  
Limited Discovery to Identify Doe  
Defendants**

[ECF 7]

Pro se Nevada state prisoner Jevyn Berney sues multiple defendants for civil-rights violations. Berney claims he suffered while he was incarcerated at the Southern Desert Correctional Center (SDCC).<sup>1</sup> On December 30, 2015, I screened Berney's complaint and stayed this case for 90 days to allow the parties a chance to settle Berney's remaining claims.<sup>2</sup> The Attorney General moves to extend the 90-day stay to allow limited discovery.<sup>3</sup> Having reviewed the record, I vacate in part the December 30, 2015, screening order, including the 90-day stay and order directing the case to proceed to mediation,<sup>4</sup> grant Berney limited discovery to identify the doe defendants, and grant Berney leave to file an amended complaint identifying at least one doe defendant by May 24, 2016.

**Discussion**

After screening, Berney's remaining claims are (1) deliberate indifference to serious medical needs against defendants John Doe Doctor, Jane Doe Nurse, and John Doe Officer and (2) due-

---

<sup>1</sup> ECF 4.

<sup>2</sup> ECF 5 at 2.

<sup>3</sup> ECF 7.

<sup>4</sup> ECF 5. In this screening order, I also dismissed Berney's equal-protection claim for failure to state a claim because he failed to allege that any similarly situated individuals were treated more favorably. That portion of the order stands; I vacate only the portion of that order staying the case for 90 days and sending the case to proceed to mediation.

process violations against John Doe Officer.<sup>5</sup> Defendants argue that there is good cause to extend the stay to learn the identities of the doe defendants because the Attorney General cannot, in good faith, appear on behalf of unknown parties.<sup>6</sup>

Because the use of doe defendants is not favored in the Ninth Circuit,<sup>7</sup> and courts generally allow plaintiffs to conduct discovery to identify defendants whose identities cannot be known before filing the complaint,<sup>8</sup> I extend the 90-day stay to allow Berney to conduct limited discovery to identify the doe defendants. Berney may serve three interrogatories on the Attorney General to discover the identities of the John Doe Doctor, Jane Doe Nurse, and John Doe Correctional Officers at SDCC. If Berney learns the identities of these individuals, he must file an amended complaint naming them as defendants. If Berney is unable to learn the identity of at least one doe defendant, this case will be dismissed without prejudice.

Berney is advised that an amended complaint supersedes the original complaint, so the amended complaint must be complete in itself without reference to the original complaint.<sup>9</sup> If Berney chooses to file an amended complaint to identify at least one doe defendant, he must:

- file the amended complaint by **May 24, 2016**;
- include all claims, defendants, and factual allegations that he wishes to pursue in this lawsuit because anything left out will be deemed abandoned. However, Berney's amended complaint must not include claims that have already been dismissed from this lawsuit; and

---

<sup>5</sup> *Id.*

<sup>6</sup> ECF 7 at 2.

<sup>7</sup> *See Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980).

<sup>8</sup> *Id.*

<sup>9</sup> *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint is irrelevant; an amended pleading supersedes the original”); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required to reallege such claims in a subsequent amended complaint to preserve them for appeal).

- file the amended complaint on this court's approved prisoner civil-rights form and write the words "First Amended" above the words "Civil Rights Complaint" in the form's caption.

If Berney files an amended complaint, I will screen the amended complaint and issue a screening order with further instructions. If Berney cannot—or chooses not to—file an amended complaint to identify at least one doe defendant, this action will be dismissed without prejudice and without further warning.

### Conclusion

Accordingly, IT IS HEREBY ORDERED that defendants' motion to extend the stay [ECF 7] is **GRANTED** in part.

IT IS FURTHER ORDERED that **the portion of this court's December 30, 2015, order [ECF 5] directing this matter to proceed to mediation and to enter a 90-day stay is VACATED.**

IT IS FURTHER ORDERED that the Attorney General's Office must enter a limited notice of appearance within ten days on behalf of the defendants for the limited purpose of conducting pre-service discovery to ascertain the true identities of the doe defendants.

IT IS FURTHER ORDERED that plaintiff will be permitted to serve three interrogatories on the Attorney General's Office to discover the identities of the John Doe Doctor, Jane Doe Nurse, and John Doe Officers at the Southern Desert Correctional Center. If plaintiff is able to discover the identities of these individuals, he must file an amended complaint naming at least one doe defendant by **May 24, 2016**. If plaintiff files an amended complaint, the court will screen the amended complaint and issue a screening order with further directions.

The Clerk of the Court is instructed to send plaintiff the approved form for filing a § 1983 complaint, instructions for the same, and a copy of his original complaint [ECF 4]. If plaintiff chooses to file an amended complaint, he must use the approved form and he must write the words "First Amended" above the words "Civil Rights Complaint" in the caption.

The Clerk of the Court is further instructed to electronically **SERVE** a copy of this order, a copy of the original screening order [ECF 3], and a copy of plaintiff's complaint [ECF 4] on the Office of the Attorney General of the State of Nevada, attention Kat Howe.

1 IT IS FURTHER ORDERED that if plaintiff fails to file an amended complaint by **May 24,**  
2 **2016**, naming at least one doe defendant, this action will be dismissed without prejudice.

3 DATED: This 25th day of March, 2016

4   
5 \_\_\_\_\_  
6 Jennifer A. Dorsey  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28